

AMENDED IN SENATE MAY 6, 2003
AMENDED IN SENATE MARCH 24, 2003

SENATE BILL

No. 493

Introduced by Senator Cedillo

February 20, 2003

An act to add ~~Section 25400.5~~ *Sections 25400.5, 25400.6, 25400.7, 25400.8, 25400.9, 25400.10, and 24500.11* to the Health and Safety Code, relating to hazardous materials.

LEGISLATIVE COUNSEL'S DIGEST

SB 493, as amended, Cedillo. Hazardous materials: liability.

Existing law, the Carpenter-Presley-Tanner Hazardous Substance Account Act, imposes liability for hazardous substances removal or remedial actions.

Existing law, including the Porter-Cologne Water Quality Control Act and the provisions regulating hazardous waste and releases from underground storage tanks, impose various requirements with regard to corrective action and cleanup and abatement, upon persons subject to those acts.

This bill would ~~immunize~~ *provide that* an innocent purchaser or a bona fide prospective purchaser, as defined ~~in the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), from liability under specified state or local laws for the cost of response, is not liable for response costs under specified state or local laws~~ associated with a release or threatened release of a hazardous material at a site, if the innocent purchaser or bona fide prospective purchaser meets specified conditions. The bill would also ~~immunize a person from liability under~~

~~specified state or local laws provide that a person is not liable for response costs associated with a release or threatened release of a hazardous material from a site that is not owned by that person, if the person owns real property that is contiguous to, or otherwise similarly situated with respect to, that site and the person complies with additional specified requirements set forth in CERCLA. The bill would, if there are unrecovered response costs incurred by a lead agency, as defined, at a site for which an owner of the site is not liable as a bona fide prospective purchaser, require the lead agency to have a lien on the site, or authorize the lead agency to obtain from the owner a lien on other property or other assurance of payment for the unrecovered response costs, as specified.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25400.5 is added to the Health and
 2 Safety Code, to read:
 3 ~~25400.5. (a) For the purposes of this section, the following~~
 4 ~~25400.5. For purposes of this chapter, the following terms~~
 5 ~~have the following meaning:~~
 6 ~~(1) "Applicable statute" means any of the following:~~
 7 ~~(A) Division 7 (commencing with Section 13000) of the Water~~
 8 ~~Code.~~
 9 ~~(B) Chapter 6.5 (commencing with Section 25100), Chapter~~
 10 ~~6.7 (commencing with Section 25280), Chapter 6.75~~
 11 ~~(commencing with Section 25299.10), and Chapter 6.8~~
 12 ~~(commencing with Section 25300).~~
 13 ~~(C) Any other state or local law providing liability for the~~
 14 ~~response costs associated with a release of a hazardous material.~~
 15 ~~(2) "Bona fide prospective purchaser" has the same meaning~~
 16 ~~as defined in paragraph (40) of Section 101 of the federal act (42~~
 17 ~~U.S.C. Sec. 9601(40)).~~
 18 ~~(3) "Innocent purchaser" means a person who meets the~~
 19 ~~requirements for the exemption from liability set forth in~~
 20 ~~paragraph (3) of subsection (b) of Section 107 of the federal act (42~~
 21 ~~U.S.C. Sec. 9607(b)(3)).~~
 22 ~~(a) "Applicable statute" means a state or local law that~~
 23 ~~imposes liability for response costs on an owner or occupant of~~

1 *property acquired January 1, 2004, for cleanup of preexisting*
2 *pollution conditions caused by a release of hazardous material on,*
3 *under, or adjacent to the property, including, but not limited to, all*
4 *of the following:*

5 *(1) Division 7 (commencing with Section 13000) of the Water*
6 *Code.*

7 *(2) Chapter 6.5 (commencing with Section 25100), Chapter 6.7*
8 *(commencing with Section 25280), Chapter 6.75 (commencing*
9 *with Section 25299.10), and Chapter 6.8 (commencing with*
10 *Section 25300).*

11 *(b) “Bona fide prospective purchaser” means a person or a*
12 *tenant of a person who acquires ownership of a site after January*
13 *1, 2004, and that establishes all of the following by a*
14 *preponderance of the evidence:*

15 *(1) All disposal of hazardous materials at the site occurred*
16 *before the person acquired the site.*

17 *(2) The person made all appropriate inquiries into the previous*
18 *ownership and uses of the site in accordance with generally*
19 *accepted good commercial and customary standards and*
20 *practices. One or more of the following shall satisfy the “all*
21 *appropriate inquiries” requirement:*

22 *(A) Compliance with the procedures of the American Society*
23 *for Testing and Materials, including the document known as*
24 *“Standard E1527-001,” entitled “Standard Practice for*
25 *Environmental Site Assessment: Phase I Environmental Site*
26 *Assessment Process,” in the form of the document current at the*
27 *time of the inquiry.*

28 *(B) Compliance with the standards and practices established*
29 *by the Administrator of the United States Environmental*
30 *Protection Agency pursuant to Section 9601(35)(B)(ii) of Title 42*
31 *of the United States Code.*

32 *(C) In the case of property in residential or other similar use at*
33 *the time of purchase by a nongovernmental or noncommercial*
34 *entity, a site inspection and title search that does not reveal a basis*
35 *for further investigation.*

36 *(3) The person provides all legally required notices with*
37 *respect to the discovery or release of hazardous materials at the*
38 *site.*

39 *(4) The person exercises appropriate care with respect to*
40 *hazardous materials found at the site by taking reasonable steps*

1 to stop continuing release, prevent threatened future release, and
2 prevent or limit human, environmental, or natural resource
3 exposure to previously released hazardous material.

4 (5) The person provides full cooperation, assistance, and
5 access to persons who are authorized to conduct response actions
6 or natural resource restoration at a site, including the cooperation
7 and access necessary for the installation, integrity, operation, and
8 maintenance of complete or partial response actions or natural
9 resource restoration at the site.

10 (6) The person is in compliance with land use restrictions
11 established or relied on in connection with the response action at
12 a site and does not impede the effectiveness or integrity of
13 institutional control employed at the site in connection with a
14 response action.

15 (7) The person complies with all requests for information or
16 administrative subpoena issued by the lead agency under this
17 chapter.

18 (8) The person is not potentially liable, or affiliated with any
19 other person who is potentially liable, for response costs at a site
20 through direct or indirect familial relationship, or contractual,
21 corporate, or financial relationship, other than a contractual,
22 corporate, or financial relationship that is created by the
23 instruments by which title to the site is conveyed or financed or by
24 a contract for the sale of goods or services, or the result of a
25 reorganization of a business entity that was potentially liable.

26 (c)(1) “Contractual relationship” includes, but is not limited
27 to, a relationship based on a land contract, deed, easement, lease,
28 or other instrument transferring title or possession, unless the site
29 was acquired by an innocent purchaser after the disposal or
30 placement of the hazardous material on, in, or at the site, and the
31 person meets the conditions specified in paragraph (2) and
32 establishes one or more of following by a preponderance of the
33 evidence:

34 (A) At the time the person acquired the site, the person did not
35 know and did not have reason to know, that hazardous material
36 that is the subject of the release or threatened release was disposed
37 of on, in, or at the site, as provided in paragraph (3).

38 (B) The person is a government entity that acquired the site by
39 escheat, or through any other involuntary transfer or acquisition,

1 *or through the exercise of eminent domain authority by purchase*
2 *or condemnation.*

3 *(C) The person acquired the site by inheritance or bequest.*

4 *(2) The person establishes all of the following:*

5 *(A) The person is an innocent purchaser.*

6 *(B) The person provides full cooperation, assistance, and site*
7 *access to the persons that are authorized to conduct response*
8 *actions at the site, including the cooperation and access necessary*
9 *for the installation, integrity, operation, and maintenance of a*
10 *complete or partial response action at the site.*

11 *(C) The person is in compliance with land use restrictions*
12 *established or relied on in connection with the response action at*
13 *a site.*

14 *(D) The person does not impede the effectiveness or integrity*
15 *of institutional control employed at the site in connection with a*
16 *response action.*

17 *(3) To establish that, at the time the person acquired the site, the*
18 *person did not know and did not have reason to know that*
19 *hazardous material that is the subject of the release or threatened*
20 *release was disposed of on, in, or at the site, the person shall*
21 *demonstrate all of the following by a preponderance of the*
22 *evidence:*

23 *(A) On or before the date on which the person acquired the site,*
24 *the person carried out all appropriate inquiries into the previous*
25 *ownership and uses of the site in accordance with generally*
26 *accepted good commercial and customary standards and*
27 *practices.*

28 *(B) The person took reasonable steps to stop continuing*
29 *release, prevent threatened future release, and prevent or limit*
30 *human, environmental, or natural resource exposure to previously*
31 *released hazardous material.*

32 *(C) In the case of property for residential use or other similar*
33 *use purchased by a nongovernmental or noncommercial entity, a*
34 *site inspection and title search that did not reveal a basis for*
35 *further investigation shall satisfy the requirements of this*
36 *paragraph.*

37 *(4) Nothing in this section diminishes the liability of a previous*
38 *owner or operator of a site who would otherwise be liable for the*
39 *release of hazardous materials. Notwithstanding this paragraph,*
40 *if the person obtains actual knowledge of the release or threatened*

1 release of hazardous materials at a site when the person owned the
2 real property and then subsequently transferred ownership of the
3 property to another person without disclosing that knowledge, the
4 person who fails to make that disclosure is not entitled to a defense
5 under Section 25400.6.

6 (5) Nothing in this section affects the liability of a person who,
7 by an act or omission, causes or contributes to the release or
8 threatened release of a hazardous material that is the subject of the
9 action relating to the site.

10 (d) “Innocent purchaser” means a person who can establish
11 all of the following by a preponderance of the evidence:

12 (1) The release or threatened release of a hazardous material
13 and the damages resulting therefrom were caused solely by an act
14 or omission of a third party, other than an employee or agent of the
15 person, other than one whose act or omission occurs in connection
16 with a contractual relationship, existing directly or indirectly, with
17 the person, except where the sole contractual arrangement arises
18 from a published tariff and acceptance for carriage by a common
19 carrier by rail.

20 (2) He or she exercised due care with respect to the hazardous
21 material concerned, taking into consideration the characteristics
22 of the hazardous material, in light of all relevant facts and
23 circumstances.

24 (3) He or she took precautions against foreseeable acts or
25 omissions of a third party and the consequences that could
26 foreseeably result from those acts or omissions.

27 (e) “Hazardous material” has the same meaning as defined in
28 paragraph (8) of subdivision (a) of Section 25395.20.

29 (f) “Lead agency” means the agency that exercises primary
30 environmental oversight authority over remediation of a site and
31 incurs response costs for the site. If there is more than one potential
32 lead agency, an agency may request and be designated as the
33 administering agency by the Site Designation Committee applying
34 the factors set forth in subdivision (c) of Section 25262, and that
35 administering agency shall be deemed to be the lead agency for
36 purposes of this chapter.

37 (g) “Response” includes a response action as defined in
38 Section 25323.3, or a response under any other applicable statute.

1 (h) “Site” means an area, location, or site where a hazardous
2 material has been released or threatens to be released into the
3 environment.

4 SEC. 2. Section 25400.6 is added to the Health and Safety
5 Code, to read:

6 25400.6. Notwithstanding any other provision of state law,
7 including, but not limited to, Section 25323.5, an innocent
8 purchaser or a bona fide prospective purchaser is not liable under
9 an applicable statute for response costs associated with a release
10 or threatened release of a hazardous material at a site.

11 SEC. 3. Section 25400.7 is added to the Health and Safety
12 Code, to read:

13 25400.7. (a) Notwithstanding any other provision of state
14 law, including, but not limited to, Section 25323.5, a person is not
15 liable under an applicable statute for response costs associated
16 with a release or threatened release of a hazardous material from
17 a site that is not owned by that person, if the person demonstrates,
18 by a preponderance of the evidence, that both of the following
19 apply:

20 (1) The person owns real property that is contiguous to, or
21 otherwise similarly situated with respect to, the site, and the real
22 property owned by that person is, or may be, contaminated by a
23 release or threatened release from the site.

24 (2) The person demonstrates by a preponderance of the
25 evidence all of the following:

26 (A) The person did not cause, contribute, or consent to the
27 release or threatened release.

28 (B) The person is not potentially liable, or affiliated with a
29 person who is potentially liable, for response costs at a site through
30 one or more of the following:

31 (i) A direct or indirect familial relationship.

32 (ii) A contractual, corporate, or financial relationship, other
33 than a contractual, corporate, or financial relationship that is
34 created by a contract for the sale of goods or services.

35 (iii) A reorganization of a business entity that was potentially
36 liable.

37 (C) The person takes reasonable steps to stop a continuing
38 release, prevent threatened future release, and prevent or limit
39 human, environmental, or natural resource exposure to hazardous
40 material released on or from property owned by that person.

1 (D) The person provides full cooperation, assistance, and
2 access to persons who are authorized to conduct response actions
3 or natural resource restoration at the site from which there has
4 been a release or threatened release, including the cooperation
5 and access necessary for the installation, integrity, operation, and
6 maintenance of a complete or partial response action or natural
7 resource restoration at the site.

8 (E) The person is in compliance with land use restrictions
9 established or relied on in connection with the response action at
10 the site, and does not impede the effectiveness or integrity of
11 institutional control employed in connection with a response
12 action.

13 (F) The person is in compliance with any request for
14 information or administrative subpoena issued by the lead agency.

15 (G) The person provides all legally required notices with
16 respect to the discovery or release of hazardous materials at the
17 site.

18 (H) At the time the person acquired the property, the person
19 conducted all appropriate inquiry with respect to the property and
20 did not know or have reason to know that the property was or could
21 be contaminated by a release or threatened release of hazardous
22 material from other real property not owned or operated by the
23 person.

24 A person who knew or had reason to know at the time of
25 acquisition that the property was or could be contaminated by a
26 release or threatened release of a hazardous material from other
27 real property not owned or operated by the person may
28 nevertheless qualify as a bona fide prospective purchaser if he or
29 she meets the requirements of subdivision (b) of Section 25400.5.

30 With respect to a hazardous material from one or more sources
31 that are not on the property of a person who is a contiguous
32 property owner that enters ground water beneath the property of
33 the person solely as a result of subsurface migration in an aquifer,
34 subparagraph (C) of paragraph (2) of subdivision (a) does not
35 require the person to conduct ground water investigations or to
36 install ground water remediation systems, except in accordance
37 with Management Memo #90-11 issued by the Department of Toxic
38 Substances Control titled "RP-Ownership of Property Over
39 Contaminated Groundwater."

1 *Nothing in this section limits a defense to liability that may be*
2 *available to the person under any other provision of state law, and*
3 *nothing in this section imposes liability on the person that is not*
4 *otherwise imposed by an applicable statute.*

5 SEC. 4. *Section 25400.8 is added to the Health and Safety*
6 *Code, to read:*

7 25400.8. *The protections provided in Sections 25400.6 and*
8 25400.7 are in addition to, and do not otherwise affect, other
9 protections provided under state law.

10 SEC. 5. *Section 25400.9 is added to the Health and Safety*
11 *Code, to read:*

12 25400.9. *If there are unrecovered response costs incurred by*
13 *a lead agency at a site for which an owner of the site is not liable*
14 *as a bona fide prospective purchaser, the lead agency shall have*
15 *a lien on the site, or may by agreement with the owner, obtain from*
16 *the owner a lien on other property or other assurance of payment*
17 *for the unrecovered response costs, subject to all of the following:*

18 (a) *A response action for which there are unrecovered costs of*
19 *the lead agency is carried out at the site.*

20 (b) *The response action increases the fair market value of the*
21 *site above the fair market value of the site that existed before the*
22 *response action was initiated.*

23 (c) *The lien shall arise at the time at which costs are first*
24 *incurred by the lead agency with respect to a response action at the*
25 *site.*

26 (d) *The lien amount may not exceed the increase in fair market*
27 *value of the property attributable to the response action at the time*
28 *of a sale or other disposition of the property.*

29 (e) *The lien shall continue until the earlier of satisfaction of the*
30 *lien by sale or other means, or recovery of all response costs*
31 *incurred by the lead agency at the site.*

32 (f) *The lien shall be subject to the rights of a purchaser, holder*
33 *of a security interest, or judgment lien creditor whose interest is*
34 *perfected under applicable state law before notice of the lien has*
35 *been filed in the appropriate office within the state or county or*
36 *other governmental subdivision, as designated by state law. That*
37 *purchaser, holder of a security interest, or judgment lien creditor*
38 *shall be afforded the same protections against the lien as are*
39 *afforded under state law against a judgment lien that arises out of*
40 *an unsecured obligation and that arises as of the time of the filing*

1 of the notice of the lien. The notice shall be recorded in the official
2 records of the County Recorder's office for the county in which the
3 real property is located. For purposes of this subdivision, the terms
4 "purchaser" and "security interest" shall have the definitions
5 provided under Section 6323(h) of Title 26 of the United States
6 Code.

7 SEC. 6. Section 25400.10 is added to the Health and Safety
8 Code, to read:

9 25400.10. Sections 24500.6 and 25400.7 do not exempt a
10 person from liability for bodily injury or wrongful death, and do
11 not exempt a permitted past, present, or future owner or operator
12 of a hazardous waste facility, as defined in Section 25117.1, from
13 what is required to obtain a hazardous waste facilities permit
14 pursuant to Chapter 20 (commencing with Section 66270.1) of
15 Division 4.5 of Title 22 of the California Code of Regulations, or
16 from the corrective action, closure, and postclosure requirements
17 set forth in Chapter 6.5 (commencing with Section 25100).

18 SEC. 7. Section 25400.11 is added to the Health and Safety
19 Code, to read:

20 25400.11. Sections 25400.6 and 25400.7 are not intended to,
21 and may not be interpreted to, limit the state's authority, to the
22 extent that Chapter 6.5 (commencing with Section 25100) would
23 not comply with the requirements for obtaining approval and
24 authorization under Part 271 (commencing with Section 271.1) of
25 Title 40 of the Code of Federal Regulations.

26 ~~(4) "Hazardous material" has the same meaning as defined in~~
27 ~~paragraph (8) of subdivision (a) of Section 25395.20.~~

28 ~~(5) "Response" includes a response action as defined in~~
29 ~~Section 25323.3, or a response action subject to other applicable~~
30 ~~statute.~~

31 ~~(6) "Site" means an area, location, or facility where a~~
32 ~~hazardous material has been released or threatens to be released~~
33 ~~into the environment.~~

34 ~~(b) (1) Notwithstanding any other provision of state law,~~
35 ~~including, but not limited to, Section 25323.5, an innocent~~
36 ~~purchaser or a bona fide prospective purchaser is not liable under~~
37 ~~any applicable statute for any costs of response associated with a~~
38 ~~release or threatened release of a hazardous material at a site, if the~~
39 ~~innocent purchaser or bona fide prospective purchaser's potential~~
40 ~~liability for the release or threatened release is based solely on the~~

1 ~~person's ownership or operation of the site, including, but not~~
2 ~~limited to, if the person, due to possession or control of the site, is~~
3 ~~authorized to undertake a response action at the site.~~

4 ~~(2) Paragraph (1) does not apply if the innocent purchaser or~~
5 ~~bona fide prospective purchaser impedes the performance of any~~
6 ~~response action or natural resources restoration associated with the~~
7 ~~release or threatened release.~~

8 ~~(c) Notwithstanding any other provision of state law,~~
9 ~~including, but not limited to, Section 25323.5, a person is not liable~~
10 ~~under any applicable statute for any costs of response associated~~
11 ~~with a release or threatened release of a hazardous material from~~
12 ~~a site that is not owned by that person, if all of the following apply:~~

13 ~~(1) The person owns real property that is contiguous to, or~~
14 ~~otherwise similarly situated with respect to, the site, and the real~~
15 ~~property owned by that person is, or may be, contaminated by a~~
16 ~~release or threatened release from the site.~~

17 ~~(2) The person complies with the requirements set forth in~~
18 ~~clauses (i) to (viii), inclusive, of subparagraph (A) of paragraph (1)~~
19 ~~of subsection (q) of Section 107 of the federal act (42 U.S.C. Sec.~~
20 ~~9607(q)(1)(A)(i)-(viii)).~~

21 ~~(d) The immunity provided by this section is in addition to, and~~
22 ~~does not otherwise affect, any other immunity provided under state~~
23 ~~law.~~

24 ~~(e) This section does not exempt a person from liability for~~
25 ~~bodily injury or wrongful death.~~